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FEDERAL COMMUNICATIONS COMMISSION
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January 27, 1995

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

Re: Ex Parte Notice
MM Docket No. 92-260

Dear Mr. Caton:

On January 18, 1995, the Commission held an informal meeting to allow invited participants to make ex parte presentations to various FCC staff members regarding issues pertaining to the above-referenced proceeding. At the conclusion of that meeting, participants were invited to submit a summary of any significant points they may have raised at such meeting which had not previously been included in the record. Accordingly, pursuant to Section 1.1200 et seq. of the Commission's Rules, Time Warner Entertainment Company, L.P. ("Time Warner") hereby submits the following comments.

The stated purpose of the January 18 meeting was to resolve certain previously disputed factual issues. Given the presentations by parties representing a wide variety of viewpoints at that meeting, it now appears that there is no longer any factual dispute over these crucial points:

- In the vast majority of MDU buildings, the Commission's current point of demarcation is located in a public hallway or is otherwise readily accessible, allowing

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for convenient access by all broadband competitors to the wiring installed within individual apartment units.

- Even in the de minimis number of MDU buildings (for example, less than 2 percent in Manhattan) where the current demarcation point is inaccessible precisely 12 inches outside the unit, truly internal wiring can be accessed in all cases at the wall plate or other point where the wiring enters the dwelling unit.
- If the current demarcation point in MDU buildings is moved far outside the individual unit, competition will be thwarted because the cable operator who installed the distribution infrastructure in that building could lose a critical link to the customer, and would not be able to deliver other broadband services to that customer, such as Internet access, video on demand, or telephony.
- So long as a customer is receiving traditional cable service from another provider over the only broadband wire going into the dwelling unit, the cable company who installed that wire is foreclosed from competing unless it bears the expense of wiring the building a second time, an unlikely scenario if the Commission adopts the "one wire" policy for MDUs advocated by certain telephone companies and others.
- It is technically and commercially impracticable for two or more competitors to "share" the same broadband distribution infrastructure within MDU buildings.
- There is no technological or economic barrier preventing the installation of a separate distribution infrastructure by each competitor seeking to serve MDU buildings.

By the end of the meeting, it became evident that the real complaint of most competing multichannel video programming distributors ("MVPDs") attending the meeting was that they are often unable to negotiate contractual arrangements with landlords allowing them to install their wiring in MDU buildings. Because of their inability to offer sufficiently attractive terms for landlords to allow them to install their own wiring, they want an imprimatur from the Commission to simply seize the wiring already installed by the cable operator.

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Time Warner submits that the alleged inability of competing MVPDs to obtain permission from landlords to install their facilities is vastly overstated. For example, Liberty Cable Company, Inc. ("Liberty"), one of the participants at the January 18 meeting, is owned by the Milstein family, one of the largest landlords and property management conglomerates in New York City.¹ Another participant at the meeting constructs and operates unfranchised cable systems for one of the nation's largest developers, Trammel Crowe. Even where the competing MVPD is not affiliated with the landlord, they are free to offer individually negotiated rates to each landlord without regard to the prohibition on rate discrimination imposed on cable operators by the 1992 Cable Act, and they are free to offer a percentage of their revenues to the landlord, an option not available to Time Warner in its efforts to compete with the unfranchised Liberty in New York City.

In its numerous pleadings filed in this proceeding, and again at the January 18 meeting, Liberty went on at great length in its claim that landlords will not allow multiple wires in their buildings due to "aesthetic" concerns or due to potential "disruption" to tenants. These unfounded claims are flatly contradicted, however, in Liberty's own promotional brochure dated December 30, 1994 and distributed throughout Manhattan (relevant pages attached):

We take great care to ensure the transition to Liberty Cable is virtually transparent to your building residents. The entire installation process is non-intrusive and requires minimum construction. Typically, we install a parallel system that coexists with that of your present system.

* * *

[W]e install a vertical wire parallel to that of [Time Warner]. In pre-war structures, this vertical wire is usually enclosed in conduit along the exterior of the building. In post-war buildings, it is often either

¹Even in buildings in New York which are owned by the Milstein family, like 182 E. 95th Street, Liberty has simply expropriated large portions of Time Warner's distribution system -- which was paid for by Time Warner -- making it apparent that the problem is not landlord denial of access, but the desire of competitors like Liberty to obtain an unfair competitive advantage.

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spliced into the master antenna system or installed in conduit in the stairwells. This new wiring takes just days to install, is invisible to residents and does not interfere with any existing electrical or cable service.

* * *

[W]e connect the new vertical wire to each apartment using existing pathways. No new wiring is required within each apartment, so that built-ins and custom carpentry remain perfectly intact.

It should be apparent that these claims of landlord resistance are nothing more than a subterfuge. Telephone companies and competing MVPDs seek to take away a cable operator's internal distribution cables in MDU buildings so that they will not face competition in that building from that cable operator. Just as MDUs have been a fertile environment for the development of video competition to cable operators, it is expected that MDUs will provide an initial frontier for local exchange telephone competition. See, e.g., "MDUs could be 1st telephony target," MultiChannel News, January 9, 1995, p. 31. The Commission must not allow telephone companies to crush out this competition by forcing cable operators to cede control over their distribution infrastructure in MDU buildings.

If the Commission adopts the telephone industry position, it will have converted this proceeding from a parochial dispute involving less than 2 percent of the MDUs in Manhattan to a forum which sets the stage for the entire future of telecommunications competition. The telephone industry position would perpetuate the one-wire status quo, relegating MDU residents to the status of second class citizens because they would be limited to a single broadband service provider. Typically, that single provider would be the one which offers the most favorable economic terms to the landlord, rather than the provider or providers which may be preferred by individual tenants. What possible telecommunications policy goal is served by establishing rules that favor only one wire to the consumer simply because a very small percentage of landlords may find it in their economic interest to limit the number of wires in a building?


Time Warner urges the Commission to reject the telephone industry position. Maintaining the current point of demarcation in MDU buildings encourages each competitive provider to construct and maintain their own broadband path leading to each unit of the MDU building. Such an approach fosters the notion of

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facilities-based competition as repeatedly endorsed by Vice President Gore, Chairman Hundt and Congressional leadership from both parties.

The Congressional mandate as set forth in the home wiring provision of the 1992 Cable Act is sharply defined and carefully limited in scope. In its 1993 Cable Home Wiring Report and Order, the Commission adopted rules which were faithful to this narrow and specific statutory mandate and Congressional intent. The Commission should assiduously avoid excursions far beyond these express parameters, particularly given the broad reexamination of telecommunications policy currently underway in both houses of Congress.

Respectfully submitted,


Arthur H. Harding
Counsel for Time Warner
Entertainment Company, L.P.

AHH:mbt
Enclosures

cc: Hon. Reed Hundt
Hon. James Quello
Hon. Andrew Barrett
Hon. Susan Ness
Hon. Rachelle Chong
Jennifer Burton
Rick Chessen
Lynne Crakes
Meredith Jones
Jim Keegan
William E. Kennard
Jeff Lanning
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Jill M. Lockett
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Mary P. McManus
Maureen O'Connell
James Olson
Jill Ross-Meltzer
Lisa Smith
Merrill Spiegel
Greg Vogt
Larry Walke



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December 30, 1994

Liberate Your Shareholders From the Cable Monopoly!

Dear Board President:

A number of your shareholders — in search of better cable TV at better prices — have enthusiastically responded to our November 13th postcard campaign in the *New York Times*.

Isn't it time you switched to Liberty Cable? We deliver 55 channels of Basic service at bulk rates that are 30%-50% less than what you pay now. And, our Basic line-up includes channels you won't find anywhere else... like **Turner Classic Movies** and **Bloomberg Direct**. Starting January 1, 1995, we will be the first to launch **CNN International**, a 24-hour global news network. Even better, you'll find we provide superb picture quality and responsive, professional customer service.

These are only a few reasons why over 130 Manhattan co-ops and condos have already chosen the Liberty Cable advantage.

I would be happy to give a brief, ten minute presentation describing the Liberty Cable program at your next Board meeting. Simply contact us at (212) 891-7786 to arrange a time convenient for your group.

Welcome to the revolution!

Sincerely,

A handwritten signature in dark ink, appearing to read "Jennifer M. Walden", is written over the typed name.

Jennifer M. Walden
Account Executive

INSTALLATION

We take great care to ensure the transition to Liberty Cable is virtually transparent to your building residents. The entire installation process is non-intrusive and requires minimum construction. Typically, we install a parallel system that coexists with that of your present system.

The "Nuts and Bolts"

First, at our cost, we install a three-foot Plexiglas rooftop receiving antenna dish. This lightweight and environmentally clean antenna can be mounted on a tripod or attached to the water tank tower or elevator room to screen it from public view. The antenna is then connected to your existing pathway of vertical wires to each floor.

Second, we install a vertical wire parallel to that of the monopoly. In pre-war structures, this vertical wire is usually enclosed in conduit along the exterior of the building. In post-war buildings, it is often either spliced into the master antenna system or installed in conduit in the stairwells. This new wiring takes just days to install, is invisible to residents, and does not interfere with any existing electrical or cable service.

Finally, we connect the new vertical wire to each apartment using existing pathways. No new wiring is required within each apartment, so that built-ins and custom carpentry remain perfectly intact.

Announcing Liberty Cable to Your Residents

Our Marketing and Customer Service staff will work closely with you to announce the installation of our service. With your approval, we will send a general notice two weeks before each apartment is installed to welcome your building's subscribers to Liberty Cable and to describe the installation process.

